

Assembly Bill No. 1278

Passed the Assembly August 16, 2012

Chief Clerk of the Assembly

Passed the Senate August 13, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1290 of, and to repeal and add Section 1286 of, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, Hill. Health facilities: smoking.

Existing law establishes various programs for the prevention of disease and the promotion of health to be administered by the State Department of Public Health, including, but not limited to, a program for the licensing and regulation of health facilities including general acute care hospitals, acute psychiatric hospitals, and nursing facilities. A violation of these provisions is a misdemeanor.

Existing law, with certain exceptions, prohibits smoking in patient care areas, waiting rooms, and visiting rooms of specified health facilities. A violation of these provisions is an infraction. Existing law generally prohibits smoking in the workplace.

This bill would repeal the above described prohibition against smoking in specified areas of specified health facilities, and would instead prohibit smoking in all areas of a general acute care hospital and throughout the entire hospital campus, as specified. The bill would require general acute care hospitals to post specified signs and train employees on the smoking policy.

The bill would provide that the smoking prohibition does not prevent smoking on a hospital campus by a patient if the treating physician determines that the patient's treatment will be substantially impaired by the denial to the patient of the use of tobacco and the physician enters a written order permitting the use of tobacco by that patient.

The bill would also specify that violation of these provisions does not constitute either a misdemeanor or an infraction.

The people of the State of California do enact as follows:

SECTION 1. Section 1286 of the Health and Safety Code is repealed.

SEC. 2. Section 1286 is added to the Health and Safety Code, to read:

1286. (a) It is the intent of the Legislature to encourage and assist smokers to quit tobacco use and to reduce the associated risks of tobacco and secondhand smoke to hospital patients, staff, and visitors.

(b) Except as provided in subdivision (c), on and after March 1, 2013, smoking shall be prohibited in all areas of a general acute care hospital and throughout the entire hospital campus, including, but not limited to, buildings, parking areas, plazas, vehicles, underground passages, and sidewalks, unless there is a government-mandated exception. Public thoroughfares and sidewalks adjacent to the general acute care hospital but not owned by the hospital are not subject to this section.

(c) (1) This section shall not prevent smoking on a hospital campus by a patient if the treating physician determines that the patient's treatment will be substantially impaired by the denial to the patient of the use of tobacco and the physician enters a written order permitting the use of tobacco by that patient.

(2) This section shall not apply to property owned or leased by the hospital that is distinct from, and not part of, the principal medical campus if the property is used for purposes unrelated to health care.

(d) A general acute care hospital shall post signs stating that smoking is prohibited on the entire hospital campus at building entrances and in other conspicuous locations. New employees shall be advised of the nonsmoking policy during orientation and current employees shall be informed of the policy at least 60 days prior to implementation.

(e) A general acute care hospital may provide interested patients, visitors, and staff with information on, or refer them to, smoking cessation services.

(f) A city, county, or city and county may adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are no less stringent than the applicable standards under this section.

(g) A violation of this section shall not be subject to Section 1290.

SEC. 3. Section 1290 of the Health and Safety Code is amended to read:

1290. (a) Except as provided in subdivision (b), any person who violates this chapter or Section 127050 or 128600, or who willfully or repeatedly violates any rule or regulation adopted under this chapter or Section 127050 or 128600 is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment.

(b) Any person who willfully or repeatedly violates this chapter or Chapter 2.4 (commencing with Section 1417), excluding Sections 1425 and 1432, or any rule or regulation adopted under this chapter, relating to the operation or maintenance of a long-term health care facility as defined in Section 1418, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail for a period not to exceed 180 days, or by both.

In determining the punishment to be imposed upon a conviction under this subdivision, the court shall consider all relevant facts, including, but not limited to, the following:

- (1) Whether the violation exposed the patient to the risk of death or serious physical harm.
- (2) Whether the violation had a direct or immediate relationship to the health, safety, or security of the patient.
- (3) Evidence, if any, of willfulness.
- (4) The number of repeated violations.
- (5) The presence or absence of good faith efforts by the defendant to prevent the violation.

(c) For the purposes of this section, “willfully” or “willful” means the person doing an act or omitting to do an act intends the act or omission, and knows the relevant circumstances connected therewith.

Approved _____, 2012

Governor